

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

DERRICK E. MAYES,

Petitioner,

Case No. 3:22-cv-313

vs.

WARDEN, Chillicothe
Correctional Institution,

District Judge Michael J. Newman
Magistrate Judge Peter B. Silvain, Jr.

Respondent.

**ORDER: (1) DENYING PETITIONER’S MOTION IN OPPOSITION AND
OVERRULING PETITIONER’S OBJECTIONS (Doc. No. 12) TO THE MAGISTRATE
JUDGE’S REPORT AND RECOMMENDATION; (2) ADOPTING THE REPORT AND
RECOMMENDATION (Doc. No. 11); (3) DISMISSING WITH PREJUDICE THE
PETITION FOR A WRIT OF HABEAS CORPUS (Doc. No. 1); (4) DENYING ANY
REQUESTED CERTIFICATE OF APPEALABILITY; (5) CERTIFYING THAT AN
APPEAL OF THIS ORDER WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING
THAT PETITIONER SHOULD BE DENIED *IN FORMA PAUPERIS* STATUS ON
APPEAL; (6) AND TERMINATING THIS CASE ON THE DOCKET**

Petitioner Derrick E. Mayes, an inmate in state custody at the Chillicothe Correctional Institution in Chillicothe, Ohio, brings this case *pro se* seeking a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. Doc. No. 1. This case is before the Court upon the Report and Recommendation of United States Magistrate Judge Peter B. Silvain, Jr. (Doc. No. 11), to whom this case was referred pursuant to 28 U.S.C. § 636(b). Judge Silvain recommends that this Court deny Petitioner’s single ground for relief as barred by procedural default and, alternatively, as seeking relief not cognizable in this habeas corpus case. Doc. No. 11 at PageID 792-801. Petitioner responds with a motion in opposition (Doc. No. 12), which the Court liberally construes

in his favor as raising objections to the Report and Recommendations.¹ Doc. No. 12.

Upon careful *de novo* review of the foregoing—including Petitioner’s objections—as required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court determines that Judge Silvain’s Report and Recommendation applies the correct law, is well reasoned, and should be **ADOPTED**. Accordingly, Petitioner’s motion in opposition is **DENIED**; his objections are **OVERRULED**; the Report and Recommendation is **ADOPTED**; and his petition for a writ of habeas corpus is **DISMISSED with prejudice**. Petitioner is **DENIED** any requested certificate of appealability, and the Court hereby **CERTIFIES** to the United States Court of Appeals for the Sixth Circuit that an appeal of this Order would be objectively frivolous and, therefore, Petitioner should not be permitted to proceed *in forma pauperis*.

IT IS SO ORDERED.

June 25, 2024

s/Michael J. Newman
Hon. Michael J. Newman
United States District Judge

¹ *Pro se* filings are liberally construed and “however inartfully pleaded, must be held to less stringent standards than formal pleadings.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). The undersigned applies this liberal standard in the present case.